



EMPLOYMENT TRIBUNALS

Claimant

MR ABBAS ALHARAZI

v

Respondent

MERCEDES BENZ RETAIL GROUP
LTD

OPEN PRELIMINARY HEARING

Heard: Remotely by CVP On: 27/10/22

Before: Employment Judge Mr J S Burns

Appearances:

For the Claimant: In person

For the Respondent: Ms A Esmail (Solicitor)

JUDGMENT

The claims are dismissed

REASONS

1. The OPH today had been listed was to consider the following matters:
 - a) *Whether the claim of unfair dismissal should be struck out on the basis that the claimant has insufficient qualifying service to bring such a claim.*
 - b) *Was any complaint presented outside the time limits in sections 123(1)(a) & (b) of the Equality Act 2010 and if so should any complaint be struck out under rule 37 on the basis that it has no reasonable prospects of success and/or should one or more deposits orders be made under rule 39 on the basis of little reasonable prospects of success? Dealing with these issues may involve consideration of subsidiary issues including: whether there was “conduct extending over a period”; whether it would be “just and equitable” for the tribunal to permit proceedings on an otherwise out of time complaint to be brought; when the treatment complained about occurred.*
2. I heard evidence on oath from the Claimant, considered a bundle of 82 pages and in addition a news-article about the fact that Mercedes Benz UK was looking at the potential of selling the Respondent company, and I heard oral submissions from both sides.

3. The Respondent is a retailer of motor vehicles. The Claimant commenced employment with the Respondent on 23rd September 2020 as a Sales Executive – New Cars. He worked at the Respondent's Colindale outlet. The Claimant's employment terminated on 19 May 2021 by reason (according to the Respondent) of his failure to meet required conduct and performance standards during his probationary period¹. The Claimant contends that the dismissal was unfair and also an act of direct race discrimination.
4. The Claimant appealed the dismissal decision. The appeal was considered on 23/6/21 and dismissed by letter dated 12/7/21.
5. On 13/7/21 the Claimant applied to ACAS and he received his certificate on 15/7/21. Having applied the relevant rules, the effect of his application to ACAS was that the primary time limit of three months for his ET claims was extended by two days and expired on 20/8/21. However the Claimant presented his claim 17 days late on 6/9/2021.
6. The claim form contains brief particulars of the complaints including "*The line manager and area manager are good friends. They accused me of wrongdoing without formal investigations and when I asked HR to support me and look into my concerns they ignored me and failed my probation. 2 of my colleagues who are of a white descent passed probation and they joined the same time as myself. I outperformed them in every area of the company's key performance indicators. The final correspondence was delayed to me as they were not keen on me passing to next level of complaints*"
7. In his oral evidence the Claimant explained that what he meant by the last sentence of the previous paragraph is that he had made a complaint to the Area Manager Mark Thornber against his line manager Terence Farlow in April 2021 which Mr Thornber did not respond to substantively before the Claimant's dismissal and that the reason why there was no response was because Mr Thornber and/or Mr Farlow did not want the Claimant's complaints to be passed on to higher management.
8. The Claimant said first that he believed and claimed that he had been dismissed "*because his line manager Mr Farlow had not liked him and also because of his skin-colour*". He describes himself as a "*British-born Arab*". When I then asked him why he had referred to complaints in his ET1 he then said he also thought that the fact that he had made complaints against his line manager was "*in the mix*" as a further reason for his dismissal.
9. This explanation of his unfair dismissal complaint suggested a possible claim under section 103A ERA 1996, but I accepted Ms Esmail's submission that this was not pleaded in the ET1 and that the Tribunal would have to allow the Claimant to

¹ The Claimant's employment was subject to a 6 month period of probation which was originally due to end on 23 March 2021. As a result of the Claimant being furloughed from 28 October 2020 to 3 December 2020 and from 21 December 2020 to 1 March 2021, the Claimant's probation was extended and the revised probationary period end date became 13 July 2021.

amend his claim in order for such a matter to be introduced. On a fair reading of the ET1 as it stands it does not disclose such a claim. No amendment application has been made and if made I would not have allowed it because such a claim would be significantly out of time; and also the matters which the Claimant had been complaining about to Mr Thornber regarding his relationship with his line-manager appear to have been personal to him and as such unlikely to have been reasonably believed by the Claimant to have been in the public interest, as required to qualify as protected disclosures under section 43B.

10. I therefore considered that the unfair dismissal claim was for ordinary unfair dismissal only. It is a requirement of such a claim that the Claimant had two years continuous service before dismissal, which the Claimant did not. For that reason, without more, the unfair dismissal claim must be dismissed.
11. The ET1 makes no express reference to the appeal hearing being an act of race-discrimination. On a fair reading of the ET1 the last matter complained of as potential race discrimination is the dismissal which occurred on 19/5/21. In his oral evidence the Claimant confirmed that he has no complaint to make about the appeal and that the last matter complained about as race-discrimination took place on 19/5/21 as suggested by the ET1. Hence the race-discrimination claim has indeed been brought 17 days late.
12. I asked the Claimant why he had delayed presenting his claim. He started off by conceding that he had "*no legal justification*" but that he had been ignorant of the time-limits and uncertain in any event in the months after his dismissal whether or not he should embark on litigation. Under cross-examination he agreed that there was plenty of free information easily accessible on the internet which would have told him about the time-limits had he looked for it, which he had not. He also agreed that he is a well-educated person who has been a manager before.
13. He suggested that his appeal was delayed but agreed that he received his appeal outcome on or about 12/7/21 (while his claims were still in time) but that he had still unaccountably waited over another three weeks before claiming late.
14. In his final submissions (but not in his evidence) he referred to the fact that during July and August 2021 his young autistic daughter was on school holidays and that this was a distraction.
15. I take judicial notice that if this claim was permitted to proceed to trial it would, given the state of the lists, probably come on for trial in late 2023 or 2024 by which time the matters complained of would be over two years old, and that requiring the Respondent to find witnesses at that stage to deal with stale allegations would be prejudicial.
16. Section 123 of the Equality Act 2010 provides that '*proceedings on a complaint within section 120 may not be brought after the end of—(a) the period of 3 months starting with the date of the act to which the complaint relates, or b) such other period as the employment tribunal thinks just and equitable.*'

17. This is known as the “just and equitable test” and applies to the claim for race discrimination. It is for the Claimant to satisfy the tribunal that it is just and equitable to extend the time limit and the tribunal has a wide discretion. There is no presumption that the Tribunal should exercise that discretion in favour of the claimant. It is the exception rather than the rule - see Robertson v Bexley Community Centre 2003 IRLR 434
18. The Tribunal may have regard to the checklist in section 33 of the Limitation Act 1980 as modified by the EAT in British Coal Corporation v Keeble and Ors 1997 IRLR 336, EAT: The length and reasons for the delay, the extent to which the cogency of the evidence is likely to be affected by the delay, the extent to which the party has cooperated with any requests for information, the promptness with which the claimant acted once he knew of the facts giving rise to the cause of action, and the steps taken by the claimant to obtain appropriate advice once he knew of the possibility of taking action.
19. However, in applying the just and equitable formula, the Court of Appeal held in Southwark London Borough v Alfolabi 2003 IRLR 220 that while the factors above frequently serve as a useful checklist, there is no legal requirement on a tribunal to go through such a list in every case, 'provided of course that no significant factor has been left out of account by the employment tribunal in exercising its discretion'.
20. This was approved by the Court of Appeal in Abertawe Bro Morgannwg University Local Health Board v Morgan 2018 IRLR 1050 when the Court noted that “factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh).”
21. The decision of the Court of Appeal in Apleogun-Gabriel v London Borough of Lambeth 2001 IRLR 116 makes clear that there is no general principle that an extension will be granted where the delay is caused by the claimant invoking an internal grievance or appeal hearing.
22. Having taken all the above matters into account I find that the Claimant has not provided a reasonable or acceptable explanation for the delay and has not shown that it is just and equitable to extend time for his discrimination claim, and hence it must also be dismissed.

Employment Judge VR - J S Burns

Date: 27.10.22

Sent to the parties on:

1 December 2022

For the Tribunal: GDJ